IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8.12.2005

CORAM

THE HONOURABLE MR. JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR. JUSTICE S.K. KRISHNAN

C.M.A. No. 1027 of 1997
&
C.M.P.Nos. 14798 of 1998 & 10753 of 1997

Jeeva Transport Corporation,
Represented by its Managing Director,
Erode.

... Appellant
(5th Respondent)

Vs

1. K. Viswanathan
2. Koraa @ Kuriyan
3. Ahamed Haji
4. National Insurance Co., Ltd.,
   Kalpana Shopping
   Kalpatta -673 121.
5. Rajendran ... Respondents
(Respondents 2 to 5 are not necessary party, Hence given up) (Petitioner & Respondents 1 to 4)

Prayer: This Petition is filed under Section 173 of Motor Vehicles Act as against the decree and Judgment in MCOP No.2/95 on the file of Motor Accident Claims Tribunal-cum-Sub Court, Gopichettipalayam order dated 14.2.1997.

For Appellant : Mr. A.Babu

For Respondent No.1 : Mr.V.K.Nachimuthu

JUDGEMENT

(Judgement of the Court was delivered by P.SATHASIVAM.J.,)

Aggrieved by the award of the Motor Accident Claim

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Tribunal (Sub Court) Gopichettipalayam dated 14.2.1997, erstwhile Jeeva Transport Corporation, Erode has filed the above appeal.

2. In respect of grievous injuries sustained in a Motor Vehicle Accident that took place on 29.5.1994, the first respondent herein - claimant prayed for a compensation of Rs. 5 lakhs. The Tribunal based on the materials placed, after finding that the accident was caused due to the negligence of the driver of the Transport Corporation Bus, passed an award for Rs. 2 lakhs with interest at 15 per cent from the date of petition, till the date of deposit.

3. Learned counsel appearing for the appellant after taking us through the award of the Tribunal has raised the following contentions:

> "i) The Tribunal committed an error in holding that the bus driver was also equally responsible for the accident. The Tribunal ought to have fastened the entire liability in favour of the Lorry owner/Insurance company.
>
> ii) The amount awarded by the Tribunal is excessive.

4. It is seen that the first respondent herein - claimant was driver in a lorry KET 4869. While so, when the lorry was proceeding in Gopi - Sathyamangalam Main road, the bus TCB 277 belonging to the Transport Corporation dashed against the lorry due to which the claimant sustained injuries. The complaint was made by the bus driver against the lorry driver. The sketch has been marked as Ex.P-6, which shows that there was a head on collusion by two vehicles. Taking note of the place of impact and the existence of vehicles in sketch Ex.P-6, the Tribunal arrived at a conclusion that both the drivers were equally responsible for the accident.

5. Though an argument was advanced that the bus driver was in no way responsible, in view of the position of the bus as seen from the sketch, we are of the view that the conclusion of the Tribunal cannot be faulted with. Apart from this, as rightly pointed out by the learned counsel for the first respondent, though the appellant Transport Corporation has filed the above appeal before this court, impleading the claimant as first respondent and owner of a

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lorry, insurer and others as respondents 2 to 5, for the reasons best known to the appellant an endorsement was made in the memorandum of grounds of appeal by giving up respondents 2 to 5. In such circumstances, now the appellant is estopped from questioning the finding regarding negligence. It is also relevant to note that when earlier Bench in their order dated 27.4.2005 permitted the appellant to implead the Insurance Company in order to agitate the finding relating to negligence, no steps have been taken. As far as we are concerned, even the said permission cannot be granted, in view of the fact that having impleaded all the necessary and proper parties and after giving up, there is no need to give one more opportunity, as if that the appellant is unaware of the procedure. Accordingly, we reject the first contention relating to negligence.

6. Coming to the quantum, it is seen from the evidence of PW-1- injured claimant himself that due to the accident he sustained injuries on his spinal cord and damaged extensively due to which he lost sensation in both of his hands and legs. He also expressed that due to the damage caused to the urinary system, he is not in a position to pass urine naturally. Apart from the damage to his spinal cord, it is also seen that there is fracture of shoulder. This is evident from Ex.P-7. The Doctor who assessed his disability was examined as PW-3. He also narrated the nature of injuries sustained, particularly the damage caused to the spinal cord and he also expressed that due to the said damage, the injured claimant is not in a position to walk or to do any work. He cannot use his hands or legs. He cannot continue is family life. He assessed the disability to the extent of 80 %. Disability certificate has been marked as Ex.B-20. On verification of the evidence of PW-2, disability certificate EX.P-20 and other documents, the tribunal has come to a conclusion that his life is crippled and he cannot do any work like others.

7. It is relevant to note that when the injured claimant came to the court to give evidence he was brought in a wheeled chair and while he was giving evidence urine was let in through a artificial pipe. The learned Judge noted all these details in paragraph 9 of his order.

8. With the above infirmities and defects let us consider whether the Tribunal has committed an error in granting the amount. Though the claimant has prayed for sum of Rs. 10,000 towards medical expenses, in the absence of

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documentary evidence, the Tribunal rejected the entire amount. Taking note of the injuries suffered, we are of the view that the Tribunal ought to have granted the amount as claimed. As against the claim of Rs.15,000/- towards nutritious food the Tribunal has granted Rs.10,000, which is reasonable. The claim of Rs.1,000/- towards damage to clothes has been rejected. The claimant has prayed for Rs.1,50,000 towards medical expenses for which he produced Ex.P-8 to Ex.P-16. The learned counsel appearing for the appellant by drawing our attention to Ex.P-8 would contend that some of the receipts contain dates prior to the accident. It is not the case of the appellant that all the documents namely Exs.P-8 to P-16 were either created or relate to prior to the accident and further a perusal of the original documents disprove the argument of the learned counsel for the appellant. It is dated 09.01.1995, which is well after the accident. In such circumstances, we are unable to accept the objection raised by the learned counsel for the appellant. Even otherwise the Tribunal on perusal of the contents of Exs.P-8 to P-16 has granted only a sum of Rs. 1 lakh as against the claim of Rs.1,50,000/- towards medical expenses. Considering the pain and suffering the Tribunal has fixed Rs.50,000/- as against the claim of Rs.1 lakh which is also reasonable and acceptable.

9. We have already referred to the evidence of PW-2, who assessed his disability and issued disability certificate which shows that the claimant suffered disability to the extent of 80 per cent. It is unfortunate that the Tribunal having noted that the injured claimant who was aged about 34 years lost his entire life at the young age, having suffered 80 per cent disability as borne out by the evidence of PW-2, has granted a paultry amount of Rs. 20,000/- as against the claim of 1,00,000/-.

10. In respect of future loss of earning capacity, the claimant has prayed for Rs 1,24,000/-. Having found that with the ailment he cannot do any work, the Tribunal has granted only Rs. 20,000/-. In this way altogether passed an award for Rs. 2 lakhs. It is unfortunate that in the light of the materials and of the fact that the amount awarded by the Tribunal is rather too low, the Transport Corporation has approached this Court by way of an appeal for reduction without any ground, much less valid ground. It is equally unfortunate that the first respondent-claimant has not filed either cross appeal in this appeal or independent appeal; praying for higher compensation. Considering these aspects namely, no appeal are cross

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appeal before us, at this juncture, we are not in a position to grant further amount.

11. Though learned counsel appearing for the appellant made a faint argument that the Tribunal has committed an error in granting interest at the rate of 15%, in view of the discussion and observation made above, we are not inclined to alter or interfere in the rate of interest.

12. In these circumstances we do not find any ground either for interference or for reduction of the amount as claimed by the appellant. Consequently the appeal is dismissed with a cost of Rs.5,000/- payable as counsel fee.

akv/csh

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Motor Accident Claims
Tribunal-cum-Sub Court,
Gopichettipalayam.

2.The Record Keeper
VR Section,
High Court,Madras.

+ One CC to Mr.A.Babu, Advocate SR.No.48693.
+ One CC to Mr.S.K.Nachi Muthu, Advocate SR.No.48330.

PV (CO)
RSM/ 02.01.2006

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